

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Robert "Bob" Heurung,

Case No.: _____

Plaintiff,

vs.

COMPLAINT

The United States of America,

Defendant.

1. Robert "Bob" Heurung brings this lawsuit for injuries sustained as a direct result of negligent conduct by the agents and employees of the Veterans Health Administration (VHA), a division of the United States government's Department of Veterans Affairs. Bob Heurung claims that the VHA departed from accepted standards of medical practice when it failed to properly diagnosis and treat his right hip pain on 10/11/2017, failed to properly sanitize him and the instruments used during an injection on 10/11/2017, and failed to properly treat and diagnose him on 10/13/2017 after his pain got worse. As a direct result of this negligence Bob required a surgical procedure on his right hip and was hospitalized for 11 days. Bob continues to have septic arthritis in his hip which is also known as infectious arthritis, is wary of returning to the VA for treatment for fear of another infection, and has difficulty moving and enjoying his daily life. Bob Heurung claims that the departures from accepted standards that the VHA employees made caused these injuries and damages.

Parties

2. Robert "Bob" Heurung lives in St. Joseph, Stearns County, Minnesota. He received negligent medical care from the St. Cloud (Minnesota) VA Health Care

System.

3. Defendant United States of America [USA] operates the Department of Veterans Affairs, which in turn operates the Veterans Health Administration [VHA]. VHA operates the Minneapolis VA [Veterans Administration] Health Care System and the St. Cloud [Minnesota] VA Health Care System. Defendant USA, in the administration of the VHA and the Minneapolis and St. Cloud VA Health Systems, employs nurses, clerks, and other personnel and USA is vicariously responsible for the conduct of those employees.

Jurisdiction and Venue

4. Subject matter jurisdiction for this medical negligence suit against the United States is provided by the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346 (b) and 2671-2680.

5. On July 7, 2018, Gerald Rolfes submitted an administrative tort claim by filing a Standard Form 95 with the Department of Veterans Affairs, demanding fifty thousand dollars (\$50,000) in damages for the injuries and surgery to his hip.

6. By letter dated July 19, 2018, the Department of Veterans Affairs, through its General Counsel in Washington, DC, acknowledged receipt of Bob's Standard Form 95 tort claim, and noted that they have 6 months to consider the claim.

7. On August 7, 2020, in accordance with the FTCA §§ 1346(b) and 2671-2680, Title 28, United States Code, defendant United States, through the Office of General Counsel of the U.S. Department of Veterans Affairs, denied Gerald Rolfes's claim on the grounds that they believe there was no negligent or wrongful conduct on the part of an employee of the Department of Veterans Affairs (VA) acting within the scope of

employment that caused Bob Heurung compensable harm.

8. The August 7, 2020 letter also informed Bob Heurung that further action could be taken under FTCA §§ 1346(b) and 2671-2680, Title 28, United States Code, but such a suit needed to be initiated within 6 months after the date of mailing of the final denial. The final denial letter was the August 7, 2020 letter.

9. This complaint is being filed within 6 months of the August 7, 2020 final denial letter, and thus is timely as specified by 28 U.S.C. § 2401(b).

10. Venue in this district is proper under 28 U.S.C. § 1402 (b).

11. All of the acts of negligence and other wrongful conduct of the agents, servants, and/or employees of defendant United States described herein were committed within the course and scope of their agency, service, and/or employment by defendant United States.

General Allegations

12. Robert "Bob" Heurung was born on December 20, 1948. Bob is single and resides at 115 5th Avenue NW, St. Joseph, Stearns County, Minnesota.

13. Bob Heurung has a 70% service-connected disability rating but is getting paid at the 100% rate because he is unemployed due to his service-connected disabilities. Bob served in the U.S. Navy starting on June 5, 1967 and was honorably discharged October 3, 1970.

14. According to VA records Bob was seen on October 11, 2017 at the St. Cloud Veterans Administration (VA) Health Care System with pain in his right hip. He thought that he may have pulled or twisted a muscle in his hip while helping a friend with some manual labor.

15. A VA doctor told Bob “I can give you a shot and the pain will be gone in five minutes.” Bob showed the doctor where it hurt by putting his finger on the spot, the doctor pushed hard on the spot, gave Bob an injection of steroids at the site of the pain, and forcefully scrubbed over the injection site. Bob had wheeled himself into the VA using a wheelchair.

16. The next day Bob’s hip pain had worsened. He returned to the St. Cloud VA on 10/13/17 for x-rays of his hips. According to VA medical records the x-rays showed “mild degenerative arthritis of both hips.” No signs of injury to the right hip could be seen, and no further investigation into Bob’s pain was done at that time. Bob was given pain pills and told to “give the steroids a chance to work.”

17. On 10/15/17 Bob was brought to the St. Cloud Hospital by ambulance with a temperature of 103.8 degrees. Bob was told he had a staph infection and needed right hip surgery.

18. Orthopedic Surgeon Kim Schaap (M.D.) performed the surgery. Records indicate that a “right hip irrigation/debridement” was performed. Bob’s right hip was aspirated and “positive for gram-positive cocci” with “associated positive blood cultures.”

19. Bob was hospitalized for 11 days. After discharge from the hospital, Bob was homebound with a peripherally inserted central catheter for another six weeks.

Allegations of Negligence

23. Bob Heurung required right hip surgery on 10/15/17 due to the negligent actions of VA medical personnel. The appropriate standard of care required an orthopedic surgeon or other orthopedic specialist to give Bob the injection on 10/11/17, proper sanitization techniques to be followed, perform a guided injection, and provide a

proper diagnosis instead of just rushing Bob through his visit on 10/13/17. As a direct result of the VA Health Care System's negligent failure to properly diagnose Bob's injury, properly treat his injury, and failure to properly sanitize his injection site Bob has a permanent injury to his right hip and had to spend an extended period of time recovering from hip surgery.

Allegations of Damage

24. As a direct result of the negligence of agents and employees of the VA Health Care System which caused Bob Heurung's right hip injury, Bob continues to have septic (infectious) arthritis, is wary of receiving treatment from the VA for his leukopenia, has ongoing pain in his hip, cannot do the physical activities he would like to do, and has suffered pain and mental anguish in the past and will continue suffering from pain and mental anguish in the future. Plaintiff Bob Heurung estimates that the reasonable monetary value of these items is in excess of fifty thousand dollars (\$50,000).

25. Bob Heurung reserves the right to supplement these claims as consultations with additional experts are completed.

WHEREFORE plaintiff Robert "Bob" Heurung demands judgment against defendant The United States of America:

[1] For damages in excess of fifty thousand dollars (\$50,000); and

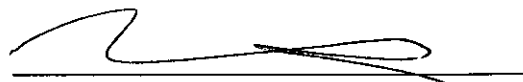
[2] For costs, disbursements, and interest as allowed by applicable laws.

I hereby acknowledge that sanctions may be
awarded pursuant to Minn. Stat. § 549.211.

BRADSHAW & BRYANT, PLLC

Dated: 2/2/2021

By:



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